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9 Attorneys for Plaintiffs
10 TRENT WEST and TRENT WEST, INC.

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA

13 TRENT WEST and TRENT WEST, INC.,

14 Plaintiffs,

15 v.

16 DIAMOND SERVICES MANAGEMENT,
17 LLC, and FREDERICK GOLDMAN, INC.,

18 Defendants.

CASE NO. _____

**COMPLAINT FOR BREACH OF
CONTRACT**

DEMAND FOR JURY TRIAL

1 Plaintiffs, Trent West and Trent West, Inc., allege as follows:

2 **INTRODUCTION**

3 1. In 2007, the parties to this litigation entered into a patent license agreement
4 (“Agreement”). The license scheme has been successful for all parties resulting in hundreds of
5 millions of dollars of profitable business. For reasons unknown to plaintiffs, defendants started
6 slow-paying their royalty obligations in 2017 and eventually, commencing in February 2019
7 refused to pay any royalty whatsoever. In the face of defendants’ refusal to pay royalties owed to
8 plaintiffs, plaintiffs filed an action in the United States District Court for the Northern District of
9 California, Case No. 5:19-cv-02472-SVK. Defendants paid plaintiffs the outstanding balance and
10 that case was dismissed July 3, 2019. Since July 3, 2019, defendants renewed their practice of late
11 payments and have again stopped paying altogether. This suit results from defendants’ failure to
12 pay royalties due under the Agreement.

13 **JURISDICTION**

14 2. This court has jurisdiction of this action pursuant to 28 U.S.C. § 1332, in that this
15 action is between citizens of different states and the matter in controversy exceeds seventy-five
16 thousand dollars. All of the plaintiffs herein are citizens of Santa Cruz County, California.
17 Defendant Frederick Goldman, Inc., is a New York corporation with its principal place of business
18 in New Jersey. Plaintiffs are informed and believe and allege thereon that none of the members of
19 Diamond Services Management, LLC, are citizens of California.

20 **INTRADISTRICT ASSIGNMENT**

21 3. This action should be assigned to the San Jose Division as the plaintiffs are citizens
22 of Santa Cruz County and the acts and omissions giving rise to plaintiffs’ claims arise out of Santa
23 Cruz County.

24 **PARTIES**

25 4. Plaintiff, Trent West, is a licensor of the patents subject to the Agreement. He is a
26 citizen of Santa Cruz County, California.

5. Plaintiff, Trent West, Inc., is a California corporation, with its principal place of business in Santa Cruz County, California, and is a licensor of the patents subject to the Agreement.

6. Plaintiffs are informed and believe and thereon allege that defendant Diamond Services Management, LLC, is comprised entirely of partners who are not citizens of California.

7. Defendant Frederick Goldman, Inc., is a New York corporation with its principal place of business in Secaucus, New Jersey.

8. Plaintiffs are informed and believe and thereon allege that, at all times herein mentioned, each of the defendants sued herein was the agent and employee of each of the remaining defendants and was at all times acting within the purpose and scope of such agency and employment.

FIRST CAUSE OF ACTION

(Breach of Contract)

9. The Agreement provides defendants herein with a license to “have made, use, offer for sale, sell, have sold, and import Licensed Products” as “Licensed Products” are defined in the Agreement.

10. The Agreement provides for defendants to make royalty payments within 60 days of the end of defined royalty periods.

11. Plaintiffs have fulfilled and performed all of their obligations under the Agreement.

12. Commencing in December, 2019, defendants failed to pay royalties due timely and thus, breached their contractual obligations to plaintiffs. Eventually, in June, 2021 defendants came to refuse to pay any royalty amounts and thus, breached their contractual obligations to plaintiffs.

13. The Agreement is in effect and fully enforceable because one of the licensed patents, U.S. Patent No. 6,928,734, has not yet expired, terminated or found to be invalid or unenforceable.

14. Defendants presently owe plaintiffs in excess of \$100,000 in royalty payments and interest which continues to accrue daily.

1 15. Defendants' failures to pay royalties timely or at all, comprise breaches of the
2 Agreement and entitles plaintiffs to damages as are proven at trial, but no less than \$100,000.

3 **SECOND CAUSE OF ACTION**

4 **(Breach of Implied Contract of Good Faith and Fair Dealing)**

5 16. Plaintiffs hereby reallege and incorporate paragraphs 1-15 above.

6 17. Plaintiffs are informed and believe that defendants acted as alleged herein
7 intentionally and in bad faith.

8 18. Defendants, by their actions as alleged herein, did not act fairly or in good faith in
9 respect to the Agreement.

10 **THIRD CAUSE OF ACTION**

11 **(Breach of Fiduciary Duty)**

12 19. Plaintiffs hereby reallege and incorporate paragraphs 1-18 above.

13 20. By virtue of the licensor-licensee relationship and operating terms found in the
14 Agreement, the parties herein engaged as joint ventures in the exploitation of plaintiffs' patents.

15 21. As joint venturers with plaintiffs, defendants owe fiduciary duties to plaintiffs
16 which duties were breached by the acts alleged herein.

17 22. As an actual and proximate result of defendants' breaches of their duties as
18 fiduciaries, plaintiffs have suffered damages in an amount to be determined at trial.

19 23. Defendants' willful and intentional acts as alleged herein were in bad faith and
20 justify an award of punitive damages.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, plaintiffs pray for judgment against defendants and each of them as
23 follows:

- 24 1. For compensatory damages for amount to be proven at trial, but not less than \$100,000;
25 2. For interest on sums paid untimely or not paid at all, as proven at trial;
26 3. Punitive damages;
27 4. For costs of suit herein incurred;
28 5. For attorney fees according to proof; and

1 6. Such additional relief as the Court deems appropriate.

2 **DEMAND FOR JURY TRIAL**

3 Plaintiffs Trent West and Trent West, Inc., pursuant to Civil L.R. 3-6(a) hereby demand a
4 jury trial of the above-encaptioned matter.

5
6 DATED: July 12, 2021

KING & KELLEHER, LLP

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9 By: /s/ Edward Vincent King, Jr.
 Edward Vincent King, Jr.

10 Attorneys for Plaintiffs
11 TRENT WEST and TRENT WEST, INC.